

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

CONN CREDIT I, LP

Plaintiff,

V.

TF LOANCO III, LLC,

Defendant.

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Civil Action No. 1:14-cv-00429

JURY TRIAL DEMANDED

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff, CONN CREDIT I, LP files this Original Complaint against Defendant TF LOANCO III, LLC and in support thereof, respectfully shows the Court as follows:

Parties

1. Conn Credit I, LP, (“Conn’s”) is a Texas Limited Partnership which has principal place of business in The Woodlands, Montgomery County, Texas.
2. TF Loanco III, LLC, is a foreign corporation with its principle place of business upon information and belief in Orlando, Florida. (“TF Loan”). TF Loan does business in the State of Texas, and the causes of action against TF Loan relate to TF Loan’s contact with Texas. TF Loan can be served with process by serving its registered agent: Linda McGurn, 101 SE 2nd Place, Ste. 202, Gainesville, Florida, 32601. TF Loan has also agreed to accept service by certified mail to its address: “Trax Financial”; Attn: Michael Moreland; 200 S. Orange Ave, Suite 2875; Orlando, Florida, 32801.

Jurisdiction

3. This Court has diversity jurisdiction over this action under 28 U.S.C. §1332. It is a civil action between citizens of different states and the amount in controversy exceeds \$75,000.

4. Defendant TF Loan does business in Texas because it has entered into contracts for business with Texas residents, and these Texas contacts form the basis of part of the causes of action in this Complaint. Furthermore, TF Loan unconditionally and irrevocably consented to submit to the exclusive jurisdiction of the courts, including “United States District Court, of Texas” by written agreement.

Venue

5. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events that make up the basis of this Complaint occurred within this judicial district.

Background Facts

6. Plaintiff Conn’s offered for sale, through a competitive bidding process, a substantial amount of consumer loans that had been charged-off by Conn’s (“Bulk Sale”) and consumer loans that become charged off, on a monthly basis by Conn’s (“Forward Flow”), through January, 2015 (collectively, the “Portfolio”). Conn’s engaged a marketing agent to present and manage the sale of the Portfolio. The marketing agent engaged in substantial marketing efforts to facilitate the sale of the Portfolio.

7. Over 4,000 sales announcements were transmitted and over 700 phone calls made to elicit bids from potential purchasers. Approved potential bidders were permitted to exercise pre-bid due diligence from April 3, 2014 to April 22, 2014. Conn’s and its marketing agent provided substantial information regarding the Portfolio during this time.

8. Bids were submitted to the marketing agent on or before April 22, 2014. On or around April 24, 2014, in reliance on TF Loan's bid for the Bulk Sale and Forward Flow (including its markup of the draft purchase agreement), Conn's entered into exclusive negotiations with Trax. . From April 24, 2014 through and including April 30, 2014 the parties and their respective principals negotiated the a Purchase and Sale Agreement ("PSA") The PSA was entered into by TF Loan and Conn's on April 30, 2014.

9.

10. Prior to entering into the PSA, TF Loan reviewed and evaluated to its full satisfaction, the draft purchase and sale agreement provided as part of the bidding process. It also reviewed and evaluated the Accounts sold pursuant to the PSA. TF Loan was represented by counsel and after numerous rounds of negotiations agreed to the various terms, provisions, conditions limitations, waivers and disclaimers in the PSA.

11. Among the various terms in the PSA is the obligation of TF Loan to make payments upon delivery of accounts. Such deliveries were to occur on a quarterly basis unless Buyer provided notice to Seller that it elected to take delivery on a monthly basis. After the first two deliveries ("Delivery 1": and "Delivery 2", respectively) of accounts, TF Loan did not notify Conn's that it wanted a monthly delivery of accounts. Accordingly, Conn's was obligated to convey the computer files for "Deliveries 3, 4, 5 and 6" (the "August Deliveries") on August 25, 2014. The Closing Date, as a result, for Delivery 3 is August 28, 2013. On August 25, 2014, Conn's complied with its scheduled delivery obligation of the August Deliveries. TF Loan, however, has demanded a material alteration of the funding structure in the PSA, including demanding an approximately \$2,000,000 reduction in the purchase price for the Forward Flows and issuing a promissory note to Conn's.

12. Starting on July 16, 2014 and continuing through August 26, 2014, through a series of oral and written communications, TF Loan has unambiguously communicated its refusal to comply with its August Delivery payment obligations. TF Loan has declared through its agents and representatives that it will not fund the August 28, 2014 closing in respect of the August Deliveries.

13. Failure to comply with its payment obligations is a breach of the PSA.

14. TF Loan's failure to fulfill the terms of the PSA will cause damage to the value of the Portfolio and cause Conn's to incur substantial damages relating to the re-sale of the Portfolio. TF Loan stated refusal to pay all amounts due and owing to Conn's will cause Conn's to be damaged in an amount within the jurisdictional limits of this Court. Faced with these damages, Conn's has found it necessary to bring this lawsuit.

Cause of Action – Breach of Contract

15. Conn's incorporates all previous paragraphs of this Complaint as if fully set forth herein. The PSA constitutes a valid, enforceable contract between Conn's and TF Loan. TF Loan has clearly announced that it will breach the PSA by announcing orally and in writing to Conn's that it will not close on, or fund, the August Deliveries or other deliveries as required by the PSA. TF Loan's anticipated breach of contract will proximately cause Conn's to be damaged in an amount within the jurisdictional limits of this Court, for which it hereby sues.

16. All conditions precedent to Plaintiff's right of recovery under this cause of action have been performed or have occurred. Alternatively, Conn's duty to perform all conditions precedent to TF Loan's liability was waived and excused by TF Loan's declared intent to only perform its obligations if the PSA is materially altered.

Cause of Action – Attorneys’ Fees

17. Conn’s incorporates all previous paragraphs of this Complaint as if fully set forth herein. As a result of TF Loan’s respective breaches of contract, Conn’s has found it necessary to retain the undersigned counsel to prosecute this case, and has agreed to pay all reasonable and necessary attorneys’ fees and costs, for which it also sues.

18. Therefore, Conn’s is entitled to recover reasonable attorneys’ fees and costs from and against TF Loan as provided by the written PSA and by TEX. CIV. PRAC. & REM. CODE ANN. § 38.001, plus an additional reasonable attorneys’ fees should there be an appeal from judgment rendered by this Court.

19. All conditions precedent to bringing this action have been fulfilled, waived or excused.

Prayer

20. **WHEREFORE**, Plaintiff Conn Credit I, LP respectfully requests that TF Loan be ordered to pay Conn Credit I, LP:

- a. Actual damages, including special damages of lost profits, and/or diminution in value of its business accounts;
- b. Attorneys fees;
- c. Costs of Court;
- d. Prejudgment and postjudgment interest; and
- e. Such additional relief, general or special, at law or equity, to which Conn Credit I, LP may be justly entitled.

Dated: August 27, 2014

Respectfully submitted,

/s/ J. Thad Heartfield

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